IN THE SUPREME COURT OF THE UNITED STATES

October Term 1961

No. 675

JOSEPH H. BROWN

Petitioner

v.

UNITED STATES OF AMERICA

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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Petitioner,

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UNITED STATES OF AMERICA

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

JOSEPH H. BROWN, your Petitioner, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit, entered in the above entitled cause of November 21, 1961.

OPINION BELOW

The opinion of the Court below (Appendix A, *infra*, pp. A1-A) has not yet been reported.

JURISDICTION

The judgment of the Court below (Appendix B, *infra*, P.) was entered on November 21, 1961. The jurisdiction of this Court is invoked under 28 U.S.C.A., Section 1254 (1).

John Patrick Henry vs. United States of America, 361 U.S. 98.

4 Lawyer's Edition 2d 134, 80 S.C.T. 168

Elkins vs. United States of America, 364 U.S. 206, 4 Lawyer's Edition 2d 1696, 80 S.C.T. 1437

Jose Terrones Rios vs. United States of America, 364 U.S. 253, 4 Lawyer's Edition 2d 1688, 80 S.C.T. 1431

Andrew R. Mallory vs. United States of America, 354 U.S. 449, 1 Lawyer's Edition 2d 1479, 77 S.C.T. 1356.

STATEMENT

The Appellant was convicted in the United States District Court for the Eastern District of South Carolina, Charleston Division, on May 17, 1961, for the alleged crime of having in his possession goods stolen from interstate shipment, all in violation of 18 U.S.C.A., Section 659, and was subsequently sentenced to one (1) year imprisonment for said violation. Appellant is presently enlarged on Five Hundred ($500.00) Dollars bond.

QUESTIONS PRESENTED

(1) Whether or not the court erred in affirming the judgment of the District Court in regard to the Appellant's Motion to Suppress the evidence that was illegally obtained by State Officers.

(2) Whether or not the court erred in affirming the judgment of the District Court in regard to the Appellant's Motion for a Judgment of Acquittal on the grounds that he was unlawfully arrested, and there was no probable cause at the time of the arrest.

(3) Whether or not the court erred in affirming the judgment of the District Court in holding that the Appellant did have knowledge of the stolen character

of the goods at the time of his arrest.

(4) Whether or not the court erred in affirming the judgment of the District Court, upon the grounds that the Appellant's constitutional rights was not violated under the Due Process Clause of the Fourteenth Amendment of the United States Constitution, in that he was held incommunicado for 72 hours.

REASONS

The decision of the District Court and the Court of Appeals is in direct conflict with John Patrick Henry vs. United States of America.

In the Henry's case, This Honorable Court held that at the time the arrest was made, there was no probable cause to believe that the Defendant was violating or had violated the law.

This is analogous in the Petitioner's case, in that the arresting officer did not know that anything was stolen, or had any reason to believe that the beer in the Petitioner's premises was stolen.

This Honorable Court further held in the Henry's case, That arrest on mere suspicion collides violently with the basic human rights of liberty, common rumor, or report, suspicion, or even strong reason to suspect was not adequate to support a warrant for arrest.

This Honorable Court in the Henry's case further held that the arrest took place when the agents stopped the Defendant's car, and that at the time the car was stopped, there was no probable cause to believe that the Defendant had violated any law.

The Defendant in the instant case was arrested at the tim

when his liberty was restrained on the morning of July 6 1961, and not at the time when a federal warrant was issued for the arrest of the Defendant.

The warrant issued by the Federal Government for the arrest of the Defendant, could not legalize the ILLEGAL ARREST the ILLEGAL SEARCH, the ILLEGAL SEIZURE by the State Officer.

In the Elkin's case. This Honorable Court held that the evidence obtained by a State Officer during a search, which if conducted by a Federal Officer, would have violated the Defendant's immunity from unreasonable search and seizure under the 4th Amendment, is inadmissible over the Defendant's timely objection in a Federal criminal trial.

It is felt that the holding in the Elkins' case is analogous in the case of the Defendant.

This Honorable Court reached the same conclusion in the Rios case, and it is felt that the case of the Defendant fall within the category of the above cited cases.

In the Mallory's case. This Honorable Court held that the Defendant was unlawfully detained in violation of (Rule 5-a) of the Federal Rule of Criminal Procedure, requiring that a person under arrest be taken to a committing Magistrate without unnecessary delay.

It is felt that the Defendant in the instant case was unlawfully detained, in that he was held incommunicado for 72 hours by State Officers without taking him before a committing Magistrate, without unnecessary delay.

CERTIORARI was granted to review the judgment of the lower court in the abovementioned cases.

It is felt that the case of JOSEPH H. BROWN under the

facts and circumstances, warrants a reviewing by this Honorable Court of the judgment of the courts below, since it is felt that the judgment of the Court below are in direct conflict with the cases we have cited above to substantiate our point, as to why Certiorari should be granted in this case by this Honorable Court.

CONCLUSION

FOR the foregoing reasons, it is respectfully submitted that this Petition for a writ of Certiorari should be granted by this Honorable Court.

Respectfully submitted,

JOHN H. WRIGHTEN
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Charleston, S. C.

APPENDIX A

To Petition of Writ of Certiorari to the United States Fourth Circuit Court of Appeals

United States Court of Appeals

FOR THE FOURTH CIRCUIT

No. 8418.

UNITED STATES OF AMERICA,
Appellee,

versus

JOSEPH BROWN,
Appellant.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF SOUTH CAROLINA AT CHARLESTON.
ASHTON H. WILLIAMS, DISTRICT JUDGE.

(Argued November 8, 1961. Decided November 21, 1961.)

Before SOPER, BRYAN and BELL, Circuit Judges.

John H. Wrighten (Benjamin L. Cook, Jr., on brief) for Appellant, and Terrell L. Glenn, United States Attorney, (Thomas P. Simpson, Assistant United States Attorney, on brief) for Appellee.

PER CURIAM:

Convicted by a jury in the District Court of receiving and having in his possession 12 cases of beer with knowledge that they had been stolen, 18 U.S.C.A. 659, Joseph H. Brown appeals. They were found in his apartment in Charleston, South Carolina at about 2 o'clock on the morning of July 6, 1960. That the beer had been a part of an interstate shipment from Tampa, Florida to Charleston and had been stolen therefrom during the night of July 5 or early morning of July 6, 1960 is not here questioned.

In essence Brown made two points before the trial court, whose adverse rulings thereon he now assigns as error. The testimony as to his possession of the beer, he first avers, should have been suppressed because its discovery in his apartment was the result of an illegal search and seizure. He next contends the evidence at trial was not sufficient to prove that while the beer was in his possession he knew it had been stolen. In denying the defendant's motions, predicated on these assertions, to suppress and to grant a judgment of acquittal, the District Judge was plainly correct.

The fatal infirmity in these assignments of error appears at once upon a review of the evidence. Early in the morning of July 6, 1960, Sergeant Whitely of the Charleston police while cruising in his patrol car observed a man walking away from a Plymouth automobile parked on the west side of St. Phillip Street, near the corner of Line Street. This location is just opposite the common entrance at 259 St. Phillip to Brown's second floor apartment and the Belvedere Night Club, which was then operated by Brown on the first floor. The sergeant continued on his

rounds, but on returning to the vicinity a few minutes later he saw Brown, an acquaintance, leaving the club. Brown came over to the police car then stopped for the traffic light, and talked briefly with the sergeant.

When some twenty minutes later the sergeant's beat again brought him to the intersection of St. Phillip and Line Streets, he noted on the corner the same man who had earlier walked away from the Plymouth. Further on his tour he saw Brown a city block and a half away, standing in a store doorway. Quite soon afterwards, the sergeant was radioed from police headquarters to go to Line and St. Phillip Streets to investigate the unloading of an automobile then in progress. Immediately he drove north along St. Phillip Street. A block distant from Line, he saw a man run from the west to the east side of St. Phillip and into an alley near the corner. Parking his car on the east side of St. Phillip, the seregeant noted two men leave the door of Brown's apartment and walk to the corner of Line and St. Phillip. Thereupon he crossed over to the Plymouth automobile seen there before. On the rear seat were several cases of beer. Upon the arrival of another police cruiser, the two men on the corner, later identified as Allen Waring and Richard Parsons, were arrested.

When this cruiser left with the two men, Brown asked the sergeant what was the "trouble", to which the officer rejoined, "Joe, you know", adding, "I would like to take a look in your place." Brown replied, "All right, sir, but before you go in there, I am going to tell you right now you are going to find 10 cases of that beer in my place." Together they went into the Belvedere Club. Finding noth-

ing there, Whitely asked where was the beer. "Upstairs", Brown responded. The two then entered Brown's apartment. A dozen cases of beer were in the hallway and were of the same brand as that in the Plymouth. "Well, Joe, you know what this is going to mean;" the officer admonished, and Brown conceded, "Yes, sir, I know." Whitely continued, "I am going to have to take you and the beer to headquarters". Brown answered, "Yes, sir, I know that". This beer was then put in the Plymouth automobile with the first 20 cases. Brown and the beer were carried to the police station. Waring, Parsons and Brown were detained by the city police for about 72 hours but then released.

Upon ascertaining that the beer in Brown's apartment and that first seen in the Plymouth automobile together were a part of the interstate shipment heretofore described, a Special Agent of the Federal Bureau of Investigation questioned Brown, Parsons and Waring while they were in police custody. Brown denied knowledge of how the beer got into his apartment. On August 1, 1960 all three were arrested on a Federal warrant, and ultimately they were indicted under 18 U.S.C. 659. The first count of the indictment charged Parsons and Waring with the theft of 20 cases of beer, the second count accused Brown of criminally receiving and possessing 12 cases, and a third count laid to Waring a like receipt and possession of 20 cases. Brown and Parsons were tried together and found guilty. Brown's conviction alone is before us.

Obviously, Brown was not aggrieved by the search and seizure in his apartment. In effect he invited the policeman to look in his club and in his apartment. No intimidation or unfair inducement is even hinted is responsible for Brown's ready consent to the search. The object of

Whitely's quest was, of course, known to Brown. Moreover, the officer had justification for his belief that the beer in the hallway bore the taint of current larceny. What he had observed on his earlier surveillance, especially after the radio alert, gave him fair cause to regard the beer in the Plymouth as purloined goods. Referring to this beer, Brown had told the officer he would find on his premises cases of "*that* beer". Hence, he was by duty bound to seize it. He had reasonable grounds to arrest Brown, moreover, as Brown did not explain his possession of the questionable cases.

In these circumstances no valid objection could be made to the proof at trial of the beer's discovery. Only when the procurement of the evidence is effected through unlawful means is its admission barred. Brown's consent dispelled all uncertainty on this head. Grice v. U.S., 146 F.2d 849 (4 Cir. 1945); U.S. v. Bianco, 96 F.2d 97 (2 Cir. 1938).

This chronicle of the evidence confirms the rectitude of the jury's condemnation of Brown. Despite his compromising possession of patently thieved wares, he did not venture to meet its incrimination. Pearson v. U.S., 192 F.2d 681, 689 (6 Cir. 1951); Thomas v. U.S., 11 F.2d 27 (4 Cir. 1926). The only evidence at all approaching an explanation was the F.B.I. agent's testimony that Parsons told him he had put two of the cases in Brown's apartment and at a time when no one else was there. No deprivation of Constitutional rights whatsoever were suffered by Brown.

We find the appeal without merit and we affirm.

Affirmed.

COURT, U. S.

No. 175

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APPENDIX B

To Petition of Writ of Certiorari to the United States Fourth Circuit Court of Appeals

JUDGMENT

Filed and Entered November 21, 1961.

United States Court of Appeals

FOR THE FOURTH CIRCUIT

No. 8418.

United States of America,

Appellee,

vs.

Joseph Brown,

Appellant.

APPEAL FROM the United States District Court for the Eastern District of South Carolina.

THIS CAUSE came on to be heard on the record from the United States District Court for the Eastern District of South Carolina, and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court appealed from in this cause, be, and the same is, hereby, affirmed.

November 21, 1961.

MORRIS A SOPER

United States Circuit Judge.

December 2, 1961, mandate issued and transmitted to the Clerk of the United States District Court at Charleston, South Carolina.

December 2, 1961, record on appeal and original exhibits returned to the Clerk of the United States District Court at Charleston, South Carolina.

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No. 675

In the Supreme Court of the United States

OCTOBER TERM, 1961

JOSEPH H. BROWN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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Solicitor General,
HERBERT J. MILLER, JR.,
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BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. A; II R. 14-19)[1] is not yet reported.

JURISDICTION

The judgment of the court of appeals was entered November 21, 1961 (Pet. App. B; II R. 20). On December 1, 1961, the Chief Justice extended the time to file a petition for a writ of certiorari to and including January 20, 1962. The petition for a writ of cer-

[1] The record filed by petitioner is in two parts. Volume I consists of petitioner's appendix in the court of appeals and will be cited as "I R." Volume II consists of the government appendix below and proceedings before the court of appeals, and will be cited as "II R."

tiorari was filed on January 19, 1962. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the seizure of evidence with the consent of petitioner was proper.

2. Whether an alleged illegal detention by city police vitiated the federal conviction.

3. Whether the evidence was sufficient to support petitioner's conviction for possessing goods stolen from an interstate shipment knowing that they had been stolen.

STATUTE INVOLVED

Section 659 of Title 18 U.S.C. provides in pertinent part:

> Whoever embezzles, steals, or unlawfully takes, carries away, or conceals, or by fraud or deception obtains from any railroad car, wagon, motortruck, or other vehicle, or from any station, station house, platform or depot or from any steamboat, vessel, or wharf, or from any aircraft, air terminal, airport, aircraft terminal or air navigation facility with intent to convert to his own use any goods or chattels moving as or which are a part of or which constitute an interstate or foreign shipment of freight or express; or
>
> Whoever buys or receives or has in his possession any such goods or chattels, knowing the same to have been embezzled or stolen * * *
>
> * * * * *
>
> Shall in each case be fined not more than $5,000 or imprisoned not more than ten years, or both; but if the amount or value of such

money, baggage, goods or chattels does not exceed $100, he shall be fined not more than $1,000 or imprisoned not more than one year, or both.

* * * * * *

STATEMENT

Petitioner was convicted in the United States District Court for the Eastern District of South Carolina on one count charging the knowing possession of goods stolen from an interstate shipment, in violation of 18 U.S.C. 659 (I R. 3-4; I R. 50). Petitioner was sentenced to imprisonment for one year (I R. 55). The court of appeals affirmed *per curiam* (II R. 14-19).

No question was raised whether the goods were stolen from an interstate shipment. On the other issues, the uncontested pertinent facts may be summarized as follows:

On July 6, 1960, Sergeant Harold E. Whiteley of the Charleston City Police Department was on patrol at 2 a.m. when he noticed someone walk away from a black Plymouth parked at the curb near Line Street and St. Phillips Street (I R. 2-4, 13). At approximately 2:20 a.m.,[2] petitioner came out of a night club which he operated on the same corner, walked over to the patrol car, which had stopped for the traffic light, and talked briefly with the policeman (I R. 4-5). On a later round, the policeman again noticed the person, whom he had originally seen, still standing on

[2] Petitioner had known the policeman for many years (I R. 44). Petitioner had an extensive criminal record (I R. 52-53).

the corner (I R. 5). As Whiteley continued his patrol, he next saw petitioner 1½ blocks from his tavern standing in the doorway of a grocery (I R. 5, 15). Shortly thereafter, he received a radio call "that an automobile was being unloaded" at Lane and St. Phillips Streets (I R. 5, 15). Just as he was arriving, he saw one person run across the street and through an alley (I R. 5, 13). As he stopped his car, he saw two men walk away from the entrance to petitioner's apartment (above the night club) and stand on the corner (I R. 6). The policeman walked over to the Plymouth and noticed cases of Schlitz beer on the back seat (I R. 6). At that time, other officers arrived and asked the two men on the corner to whom did the car belong. One of them replied that "it did belong to him at one time but that he had sold it." (I R. 6). One of the men stated that the only thing he knew about the man who ran across the street was that they called him "Tarzan" (I R. 6). The two men were sent to the police station in a cruiser (I R. 6, 15).[*]

Shortly thereafter, the petitioner came down the street and asked the policeman, "What is the trouble, Mr. Whiteley?" The policeman replied, "Brown, you know what the trouble is. I would like to take a look in your place." (I R. 16, 7, 9.)

Petitioner replied, "All right, sir, but before you go in there, I am going to tell you right now, you are going to find 10 cases of that beer in my place" (I R. 9, 7, 16).

---

[*] These two men were indicted in the first and third counts of the indictment (I R. 3-4).

The policeman entered the premises and found 12 cases of the Schlitz beer in the hallway on the second floor (I R. 9). At that point the policeman told petitioner, "Well, Joe, you know what this is going to mean," and petitioner replied, "Yes, sir, I know" (I R. 9). The policeman continued, "I am going to have to take you and the beer to headquarters," and petitioner responded, "Yes, sir, I know that" (I R. 9). The policeman took petitioner and the beer to headquarters (I R. 9).

The policeman admitted he had not seen any defendant take beer into petitioner's place, although one defendant had admitted that he took two cases in there (I R. 43, 15–16). The policeman had no search warrant or arrest warrant (I R. 16–17, 44), and had no knowledge at that time that the beer had been taken from the railroad car (I R. 16, 45).*

Petitioner was released by the city police approximately 72 hours later (I R. 12). He was arrested under a federal warrant issued on August 1 (I R. 28).

ARGUMENT

1. Petitioner claims that there was an illegal search and seizure. The undisputed evidence indicates that the seizure was with voluntary consent. The evidence was therefore admissible.

The constitutional protections of the Fourth Amendment are not violated when one voluntarily consents to a search. *Zap* v. *United States*, 328 U.S. 624; *Davis* v. *United States*, 328 U.S. 582. The facts

* The theft from the railroad car was discovered about 8:15 a.m., July 6 (I R. 20).

of the present case show that petitioner voluntarily appeared on the scene and not only gave his consent to search, but frankly and spontaneously admitted the important element of the offense—possession of "that" beer. The consent to the search was part of the admission, made in the realization that a crime had been discovered. It was properly found to be voluntary. See *United States* v. *Mitchell*, 322 U.S. 65, where admissions after arrest and a consent to a search were held to be voluntary.

Petitioner's references to *Elkins* v. *United States*, 364 U.S. 206, and *Rios* v. *United States*, 364 U.S. 253, are clearly inapposite. At no time did the government seek to invoke the "silver platter" doctrine. Since the search was proper, the fact that it was made by a city official rather than a federal officer is irrelevant.

Henry v. *United States*, 361 U.S. 98, is also inapplicable. No officer stopped or detained petitioner. Petitioner voluntarily appeared on the scene of the crime and, apparently recognizing that he could not avoid being implicated, immediately admitted his possession. The fact that the officers did not discover until later that morning that the stolen beer came from a "boxcar" is irrelevant since in its context petitioner's statement was an acknowledgement that the beer was not his. See *Bell* v. *United States*, 254 F. 2d 82 (C.A. D.C.), certiorari denied, 358 U.S. 885.

2. The facts concerning petitioner's claim that his arrest and detention by city police were illegal were not fully developed since they play no part in this

case. The evidence does, however, show a valid arrest, resulting from the immediate detection of a crime then being committed. Petitioner's later detention by the city police is irrelevant, since no evidence resulted therefrom. See *United States* v. *Mitchell*, 322 U.S. 65; *Upshaw* v. *United States*, 335 U.S. 410, 413. There is absolutely no support in this record for petitioner's assertion that he was held "incommunicado" for 72 hours (cf. Pet. 12).

3. Petitioner also presents as a question, but does not argue, the sufficiency of the evidence to show that petitioner had "knowledge of the stolen character of the goods at the time of his arrest." The evidence is unequivocal on this issue. There was no need to rely on the presumption that recent unexplained possession is sufficient, since petitioner's voluntary, undenied admission that he had "that" beer, made before anyone ever mentioned the stolen beer, was clearly indicative of his knowledge. This admission was sufficient to support the verdict of the jury, after a clear and unchallenged charge (R. 49–50).

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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FEBRUARY 1962.